

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 09-0630

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Attorney for Plaintiff-Appellant

FILED

JAN 21 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

SHANE BUCHER,

Plaintiff-Appellant

-vs-

**AFFIDAVIT OF
LAWRENCE A. ANDERSON**

PATRICK HAROLD HUGHES,

Defendant-Appellee.

1. I am a lawyer licensed and authorized to practice law in the courts of the State of Montana.

2. I have represented Shane Bucher, the victim of Patrick Hughes' criminal conduct in this matter, during all times relevant to the criminal prosecution of Patrick Hughes and during all times relevant to Shane Bucher's tort action arising out of this matter.

3. On July 31, 2001, the Toole County Attorney filed an information charging Hughes with Negligent Vehicular Assault in violation of §45-5-205(1999), Driving Under the Influence of Alcohol in violation of §61-8-401(1999), and No Motorcycle Endorsement on License §61-5-102(2)(1999). (Ex.1)

4. Shane Bucher filed a civil action filed against Toole County, Patrick Hughes' employer, and Town Pump. In addition to his claims against Hughes, and against Town Pump for over-serving Hughes, he claimed that Hughes was a Toole County Sheriff's deputy, known to the other deputies to have a drinking problem. He claimed that Toole County negligently failed to supervise Hughes and negligently failed to apprehend Hughes on the night in question prior to his causing injuries to Shane Bucher.

5. Attached hereto is a copy of a summary judgment brief filed in the civil action that marshals the facts and claims against Toole County and Town Pump. (Ex.2). As a result of the depositions and discovery in this civil case, the evidence showed the following. Hughes was an off-duty sheriff's deputy who had borrowed a fellow deputy's motorcycle and driven it at a high rate of speed down the main street of Shelby and ran over Shane Bucher, cutting Shane Bucher's leg in half. Immediately prior to the incident, Hughes had consumed a large amount of

alcohol at the Town Pump and, thereafter, visited the sheriff's office dispatcher at the county sheriff's office, then proceeded to another off-duty sheriff's deputy's house where he consumed even more alcohol, before driving his fellow deputy's motorcycle down the main street.

6. Hughes was given a six year suspended sentence in exchange for his guilty pleas. Part of this sentence required him to pay restitution to Bucher in the amount of \$2,718.00 for medical expenses and \$34,415.70 for lost wages.(Ex.3). Over the 6 years from this suspended sentence, Hughes had only paid \$6,970.00 (Ex.4).

7. On May 7, 2009, the State filed a Petition For Revocation of Suspended Sentence. (Ex.5) However, rather than revoke the suspended sentence, the Court, at the recommendation of the probation officer, released Hughes from the suspended sentence and ordered that a civil judgment be entered against Hughes. (Ex.6)

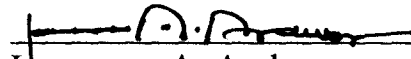
8. The undersigned proposed a civil judgment in the amount of the restitution order. (Ex. 7). However, the court rejected this proposed judgment and entered a civil judgment proposed by Hughes in the amount of \$29,463.70. (Ex.8)

9. The district court held a hearing on two days in this matter, June 29, 2009 and July 16, 2009. However, the court reporter has only transcribed the June

29, 2009 hearing and not the July 16, 2009 hearing. The undersigned has requested that the entire record be transcribed. As of the present date, the Toole County Clerk of Court has not submitted the record to the Supreme Court.

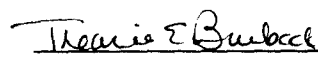
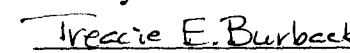
10. From the judgment entitled *Shane Bucher v. Patrick Harold Hughes*, Montana Ninth Judicial District Court, Cause Number DC-01-028, Shane Bucher appeals.

DATED this 20 day of January 2010.


Lawrence A. Anderson
P.O. Box 2608
Great Falls, Montana 59403-2608
Attorney for Plaintiff-Appellant

SUBSCRIBED AND SWORN TO before me this 20 day of January 2010.




Notary Public for the State of Montana

Typed or printed name of Notary
Residing in Great Falls, Montana
My Commission Expires: February 6, 2012

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was duly served upon the following by
mail, hand delivery, Federal Express, or facsimile transmission, as indicated:

Joslyn Hunt
Chief Appellate Defender
Office of the State Public Defender
Appellate Defender Office
139 N. Last Chance Gulch
P.O. Box 200145
Helena, MT 59620-0145

- ☒ U.S. mail
- ☐ Overnight service
- ☐ Hand delivery
- ☐ Facsimile transmission

DATED this 20 day of January 2010

Treacie Burback
Treacie Burback, Legal Assistant

c: Shane Bucher

INDEX OF EXHIBITS

1. Information and Motion & Affidavit in Support of Motion for Leave to File an Information
2. Plaintiff's Brief in Support of Motion for Partial Summary Judgment, Cause No.: DV-47-2003-129
3. Judgment, Cause No.: DC-01-28
4. Restitution Information
5. Petition for Revocation of Suspended Sentence, Cause No.: DC-01-028
6. Order Denying Petition for Revocation of Suspended Sentence and Entry of Civil Judgment, Cause No.: DC-01-028
7. Anderson letter, dated July 13, 2009, to Raph & Gianarelli with proposed judgment
8. Gianarelli letter, dated July 13, 2009, to Judge McKinnon with proposed order and judgment; and Order Denying Petition for Revocation of Suspended Sentence and Entry of Civil Judgment, filed on August 11, 2009